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**FIRST AMENDMENT TO  
PURCHASE AND REDEVELOPMENT CONTRACT**

**By and Between**

**PORT AUTHORITY OF THE CITY OF BLOOMINGTON,  
CITY OF BLOOMINGTON, MINNESOTA,  
SOUTH LOOP INVESTMENTS, LLC,  
and  
SOUTH LOOP INVESTMENTS 2, LLC**

**Dated: September \_\_, 2015**

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This document was drafted by:  
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**FIRST AMENDMENT TO  
PURCHASE AND REDEVELOPMENT CONTRACT**

THIS FIRST AMENDMENT TO PURCHASE AND REDEVELOPMENT CONTRACT, made on or as of the \_\_\_\_ day of September, 2015 (the “First Amendment to Agreement”), is by and between the PORT AUTHORITY OF THE CITY OF BLOOMINGTON, a public body corporate and politic of the State of Minnesota (the “Authority”), the CITY OF BLOOMINGTON, a Minnesota municipal corporation (the “City”), SOUTH LOOP INVESTMENTS, LLC, a Minnesota limited liability company (the “Developer”), and SOUTH LOOP INVESTMENTS 2, LLC, a Minnesota limited liability company (the “Assignee”). The Authority, the City, the Developer, and the Assignee shall be referred to herein as the “Parties.”

WITNESSETH:

WHEREAS, the Authority was created pursuant to Minnesota Statutes, Sections 469.048 to 469.068 and 469.071 (hereinafter collectively referred to as the “Act”) and was authorized to transact business and exercise its powers by a resolution of the City Council of the City; and

WHEREAS, the City and the Authority have undertaken a program to promote economic development and job opportunities and to promote the development of land which is blighted or underutilized within the City, and in this connection created a development project known as the Industrial Development District No. 1 – South Loop District (the “Development District”) pursuant to the predecessor statute of the Act; and

WHEREAS, pursuant to the Act, the Authority is authorized to acquire real property, or interests therein, and to undertake certain activities to facilitate the redevelopment of real property by private enterprise; and

WHEREAS, the Authority, the City and the Developer entered into a Purchase and Development Contract, dated December 10, 2014 (the “Original Agreement”), pursuant to which the Authority agreed to convey certain property described in Exhibit A attached hereto (the “Development Property”) within the Development District to the Developer, and the Developer agreed to develop certain improvements thereon to be completed in two phases defined in the Original Agreement as the “Minimum Improvements”; and

WHEREAS, the Developer has assigned its rights with respect to Parcel 2 (as described in Exhibit A attached hereto) to the Assignee, pursuant to that certain Assignment of Assumption Agreement, dated September \_\_, 2015 and the Assignee has assumed all of the obligations of the Developer under the Original Agreement related to Parcel 2; and

WHEREAS, Section 4.4(b) of the Original Agreement provided that the Authority would be responsible for the construction of a portion of the Minimum Improvements described and defined in the Original Agreement as the “Parking Ramp”; and

WHEREAS, the Parties now intend to amend the Original Agreement pursuant to the terms of this First Amendment to Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the Parties hereto, each of them does hereby covenant and agree with the other as follows:

Section 1. Amendments to Section 1.1 (Definitions) of the Original Agreement.

(a) The following definitions are added to Section 1.1 of the Original Agreement:

“Coffee Shop” means an approximately 2,000 square foot coffee shop to be constructed by the Developer or its assignee on the Coffee Shop and Restaurant Property.

“Coffee Shop and Restaurant Property” means Parcel 2 described in Exhibit A attached hereto.

“Coffee Shop and Restaurant Recapture Agreement” means the Coffee Shop and Restaurant Recapture Agreement between the Authority and the Developer, whereby the Developer agrees to repay a portion of the assistance provided pursuant to this Agreement if the Developer receives agreed upon profits from the Coffee Shop and the Restaurant, substantially in the form set forth in Exhibit B.

“Commencement of Construction” means the commencement of construction of any physical improvements beyond grading for each phase of the Minimum Improvements. For purposes of Commencement of Construction, (i) the Hotel, (ii) the Coffee Shop and Restaurant, and (iii) the Phase II Minimum Improvements are each considered a separate phase.

“Guaranty” means the Guaranty Agreement, dated September \_\_, 2015, between the City, the Authority, and the Guarantors.

“Guarantors” means David W. Peters, an individual, Terratron, Inc., a Utah corporation, and Mercury Investments Limited Partnership of Utah, a Utah limited partnership.

“Hotel” means an approximately 74,000 square foot hotel, including approximately 148 units to be constructed by the Developer on the Hotel Property.

“Hotel Property” means Parcel 1, as described in Exhibit A attached hereto.

“Hotel Recapture Agreement” means the Hotel Recapture Agreement between the Authority and the Developer, whereby the Developer agrees to repay a portion of the assistance provided pursuant to this Agreement if the Developer receives agreed upon profits from the Hotel.

“Parking Ramp Development Agreement” means the Parking Ramp Development Agreement, dated September \_\_, 2015, between the Authority and the Developer, as it may be from time to time modified, amended, or supplemented, concerning the construction and development of the Parking Ramp.

“Phase II Minimum Improvements Recapture Agreement” means the Phase II Minimum Improvements Recapture Agreement between the Authority and the Developer, whereby the Developer agrees to repay a portion of the assistance provided pursuant to this Agreement if the Developer receives agreed upon profits from the Phase II Minimum Improvements.

“Restaurant” means an approximately 9,500 square foot restaurant to be constructed by the Developer or its assignee on the Coffee Shop and Restaurant Property.

(b) The following definitions are amended as follows:

“Parking Management Plan” means the Parking Management Plan between the Authority and the Developer, whereby the Developer agrees to ensure shared parking in the Parking Ramp for the various

users of the Development Property. The Parking Management Plan is incorporated into the Parking Lease and Management Agreement as Article 13 of the Parking Lease and Management Agreement.

“Recapture Agreement” or “Recapture Agreements” means the one or more of the Hotel Recapture, the Coffee Shop and Restaurant Recapture Agreement or the Phase II Minimum Improvements Recapture Agreement.

Section 2. Amendment to Section 3.3(a) of the Original Agreement (Conditions of Conveyance – Phase I Property) and Section 8.1 of the Original Agreement (Financing). The provisions of Sections 3.3(a) and 8.1 of the Original Agreement are amended by the following additional provisions:

A. The Authority shall convey title to and possession of the Phase I Property to the Developer at the Phase I Closing by quit claim deed although the Developer has not secured users for the Coffee Shop and the Restaurant and has not secured financing for the Coffee Shop and the Restaurant.

B. The Developer shall obtain users for the Coffee Shop and the Restaurant, execute leases for the Coffee Shop and the Restaurant, and secure and close on financing for the Coffee Shop and the Restaurant no later than October 31, 2016.

C. The Authority shall complete the analysis required by Section 8.1 with respect to the financing obtained by the Developer for the Coffee Shop and the Restaurant prior to Commencement of Construction of the Coffee Shop and the Restaurant.

D. The Developer shall cause the Guaranty to be provided to the City and the Authority, guarantying the following obligations of the Developer:

(i) the Developer shall obtain users for the Coffee Shop and the Restaurant, execute leases for the Coffee Shop and the Restaurant, and secure and close on financing for the Coffee Shop and the Restaurant no later than October 31, 2016;

(ii) the Developer shall cause Commencement of Construction of the Coffee Shop and the Restaurant to occur no later than October 31, 2016;

(iii) in the event that the requirements of (i) and (ii) above have not been satisfied by October 31, 2016, the Guarantors shall repay to the Authority, for the benefit of the City, the amount of Public Assistance directly related to the Coffee Shop and the Restaurant (approximately 38% or \$2,135,600), less the actual amount of Common Area Costs (as defined in Reciprocal Covenants, Easements, Maintenance and Use Agreement, dated September \_\_, 2015, between the Developer, the City and the Authority) constructed or installed by Developer on or under Parcel 2, or which are attributable or apportioned to Parcel 2 (Lot 2, Block One, Lindau Link 2<sup>nd</sup> Addition) (approximately \$431,678 but in no event shall exceed \$500,000) (the “Guarantor’s Repayment Obligation”); and

(iv) in the event the requirements of (i) and (ii) above have not been satisfied by October 31, 2016 but are satisfied prior to October 31, 2018, a portion of the Guarantor’s Repayment Obligation will be repaid to the Guarantors by the Port and/or City based on a pro rata basis dependent on what date the requirements of (i) and (ii) above are met, as more fully described in the Guaranty.

Section 3. Amendment to Section 3.3(b) of the Original Agreement (Conditions of Conveyance – Phase I Property). Section 3.3(b) of the Original Agreement is deleted in its entirety and replaced with the following:

(b) The Phase I Closing shall occur upon satisfaction of the conditions specified in this Section, but no later than October 31, 2015; provided, however, that if all of the foregoing conditions have not been satisfied or waived on or before October 31, 2015, either the Authority or Developer may thereafter terminate this Agreement by ten days' written notice, in which case, neither party shall have any obligations or liability to the other hereunder.

Section 4. Amendment to Sections 3.4(b) and (c) of the Original Agreement (Conditions of Conveyance – Phase II Property). Sections 3.4(b) and (c) of the Original Agreement are deleted in their entirety and replaced with the following:

(b) Subject to the terms of Section 4.7, the Phase II Closing shall occur upon satisfaction of the conditions specified in this Section, but no later than 120 days after December 10, 2019; provided, however, that if all of the foregoing conditions have not been satisfied or waived on or before December 10, 2019, either the Authority or Developer may thereafter terminate this Agreement with respect to the Phase II Minimum Improvements by ten days' written notice, in which case, neither party shall have any obligations or liability to the other hereunder.

(c) Pursuant to Minnesota Statutes, Section 469.065, the Developer shall cause the Commencement of Construction of the Phase II Minimum Improvements within one year of the Phase II Closing and this condition of the sale of the Phase II Property must be incorporated into the Deed. The Developer agrees to cause the Commencement of Construction of the Phase II Minimum Improvements within one year of obtaining title to the Phase II Property.

Section 5. Amendment to Sections 4.4(a) and (b) of the Original Agreement (Financing, Construction, and Ownership of Parking Ramp). Sections 4.4(a) and (b) of the Original Agreement are deleted in their entirety and replaced with the following:

(a) In order to make the construction of both Phases of the Minimum Improvements financially feasible for the Developer and to promote density with respect to the commercial development occurring on the Development Property, the City and the Authority have agreed to finance the costs of the Parking Ramp in the maximum amount of up to \$5,749,739 with moneys from the South Loop Development Fund.

(b) The Authority will remain the owner of the Parking Ramp Property. Pursuant to the Parking Lease and Management Agreement, prior to construction of the Parking Ramp, the Authority will provide the Developer with a leasehold interest in the Parking Ramp Property and all improvements made to the Parking Ramp Property, including the Parking Ramp. The Authority and the Developer will work cooperatively to develop the plans and specifications for the Parking Ramp, which shall be consistent with the specifications contained on Exhibit F attached hereto (the "Parking Ramp Specifications"). The costs and expenses of preparation of the Parking Ramp specifications by applicable designers, architects, and engineers shall be included in the Project Budget, and are eligible for payment from the Public Assistance. The Developer will cause the Parking Ramp to be constructed pursuant to the provisions of the Parking Ramp Development Agreement.

Section 6. Amendment to Section 4.6 of the Original Agreement (Public Plaza). Section 4.6 of the Original Agreement is deleted in its entirety and replaced with the following:

(a) The Developer shall provide the City with a Public Plaza Easement in a form mutually agreed upon by the City and the Developer for the Public Plaza in the northwest corner of the Development Property (as depicted in the Site Plan set forth in EXHIBIT E attached hereto) the size of which will be approximately 3,363 square feet. In exchange for the Public Plaza Easement, the City agrees to pay the Developer \$10 a square foot, which will be an offset for park dedication fees normally due at the time the Phase I Property is replatted, which are estimated to be \$15,210.

(b) The costs associated with the design, construction, and maintenance of the Public Plaza shall be borne by the City and the Developer as follows:

	Design and Construction		Maintenance/Electricity/Water/ Snow Removal	
	Who does it	Who pays for it	Who does it	Who pays for it
Art Installation/Artwork	Developer	Developer	Developer	Developer
Benches/Seating Walls/ Walls/Bollards	Developer Arch	City	Developer	Developer
Lighting	Developer Arch	City	Developer	Developer
Plants, if any, with irrigation	Developer Arch	City	Developer	Developer
Hardscape (pavers)	Developer Arch	City	Developer	Developer

The Developer shall employ the architect and general contractor to design and construct the: placemaking, benches, seating, walls, trellis, bollards, hardscape, landscaping, lighting, plants/trees and irrigation system (the "City Plaza Improvements"). The City agrees to pay the estimated cost of design, construction and installation of the City Plaza Improvements of up to \$200,000 upon request to the City after completion of the City Plaza Improvements.

Section 7. Amendment to Section 4.9 of the Original Agreement (Recapture Agreement). Section 4.9 of the Original Agreement is deleted in its entirety and replaced with the following:

*Section 4.9. Recapture Agreement.* In consideration of the assistance provided by the City and the Authority under this Agreement, the Developer agrees to execute and deliver or cause its Assignee to execute and deliver to the Authority recapture agreements for the Hotel, the Coffee Shop and Restaurant, and the Phase II Minimum Improvements. The Hotel Recapture Agreement was executed on the date of this Agreement. The Coffee Shop and Restaurant Agreement will be in substantially the form set forth in Exhibit B and shall be executed by the Assignee prior to the Commencement of Construction of the Coffee Shop and the Restaurant. The Phase II Minimum Improvements Recapture Agreement will be executed prior to or at the Phase II Closing. Each Recapture Agreement will contain terms substantially consistent with the Recapture Agreement attached hereto as Exhibit B (as adjusted for each of the improvements).

Section 8. Amendment to Section 5.3 of the Original Agreement (Commencement and Completion of Construction of Phase I Minimum Improvements). Section 5.3 of the Original Agreement is deleted in its entirety and replaced with the following:

*Section 5.3. Commencement and Completion of Construction of Phase I Minimum Improvements.* Subject to Unavoidable Delays, the Developer shall cause the Commence of Construction of the Hotel on or prior to May 31, 2016 and shall cause the Commence of Construction of the Coffee

Shop and the Restaurant on or prior to October 31, 2018. Subject to Unavoidable Delays, the Developer shall substantially complete construction of the Phase I Minimum Improvements within two years of commencement of construction. All work with respect to the Phase I Minimum Improvements to be constructed on the Phase I Property shall substantially conform to the Construction Plans as submitted by Developer and approved by the Authority.

The Developer agrees for itself, its successors and assigns, and every successor in interest to the Development Property, or any part thereof, that Developer, and such successors and assigns, shall promptly begin and diligently prosecute to completion the redevelopment of the Development Property through the construction of the Phase I Minimum Improvements thereon, and that such construction shall in any event be commenced within the period specified in this Section. Subsequent to conveyance of the Development Property, or any part thereof, to Developer, and until construction of the Phase I Minimum Improvements has been completed, Developer shall make reports, in such detail and at such times as may reasonably be requested by the Authority, as to the actual progress of Developer with respect to such construction.

Section 9. Amendment to 10.3 of the Original Agreement. Section 10.3 of the Original Agreement is hereby amended to include the following Section 10.3(g):

(g) If Commencement of Construction of the Coffee Shop and the Restaurant has not occurred prior to October 31, 2018, the Authority has the option (in its sole discretion) to buy the Coffee Shop and Restaurant Parcel from the Developer at the purchase price originally paid by the Developer (\$ \_\_\_\_\_). The Authority may exercise this option by providing written notice of exercise to Developer within ninety (90) days of October 31, 2018. If the Authority does not provide such written notice within such 90 day period, the Authority's option specified in this Section 10.3(g) shall terminate and lapse without further action of any party. Upon return of the Coffee Shop and Restaurant Property to the Authority, the Authority shall have the right to develop the property in any manner it finds appropriate except that a hotel shall not be developed on the Coffee Shop and Restaurant Property.

Section 10. References to Developer. References to Developer in the Original Agreement and this First Amendment to Agreement shall include the Developer and any assignees, as appropriate.

Section 11. Amendment to Exhibit A of Original Agreement. Exhibit A attached to the Original Agreement is hereby deleted in its entirety and replaced with the Exhibit A attached hereto.

Section 12. Binding Effect. This First Amendment to Agreement shall inure to the benefit of and shall be binding upon the Authority, the City, and the Developer and their respective successors and permitted assigns. Nothing herein, express or implied, shall give to any person, other than the parties hereto, and their respective successors and permitted assigns hereunder, any benefit or other legal or equitable right, remedy, or claim under this First Amendment to Agreement.

Section 13. Severability. If any provision hereof shall be held invalid, illegal, or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, and the remaining provisions shall not in any way be affected or impaired thereby.

Section 14. Conflict among Documents. If a conflict arises between the provisions of this First Amendment to Agreement and the Original Agreement, the provisions of this First Amendment to Agreement shall control.

Section 15. Confirmation of the Original Agreement. Except as specifically amended by this First Amendment to Agreement, all terms and provisions of the Original Agreement, as heretofore amended, remain in full force and effect.

Section 16. Assignment. The Developer has assigned its rights with respect to Parcel 2 (as described in Exhibit A attached hereto) to the Assignee, pursuant to that certain Assignment of Assumption Agreement, dated September \_\_, 2015. The City and the Authority acknowledge such assignment, which is an allowable Transfer pursuant to Section 9.2(a) of the Original Agreement because the Assignee has expressly assumed the obligations of the Developer under the Original Agreement, as amended by this First Amendment to Agreement, and as it may be amended in the future, related to Parcel 2. The Assignee understands and acknowledges that the City and the Authority shall consider the Assignee a party to the Original Agreement, as amended, and shall have the right to enforce any of Developer's obligations and duties related to Parcel 2 under the Original Agreement, as amended by this First Amendment to Agreement, and as it may be amended in the future, against the Assignee.

Section 17. Effective Date. This First Amendment to Agreement shall be effective as of the date first written above.



IN WITNESS WHEREOF, the Authority, the City, and the Developer have caused this First Amendment to Purchase and Redevelopment Contract to be duly executed in their name and behalf on or as of the date first above written.

**PORT AUTHORITY OF THE CITY OF  
BLOOMINGTON**

By \_\_\_\_\_  
Robert Erickson  
Its President

By \_\_\_\_\_  
Schane Rudlang  
Its Administrator

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of September, 2015, by Robert Erickson, the President of the Port Authority of the City of Bloomington, a public body politic and corporate, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of September, 2015, by Schane Rudlang, the Administrator of the Port Authority of the City of Bloomington, a public body politic and corporate, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

Reviewed and approved by Port General Counsel.

\_\_\_\_\_  
Julie Eddington  
Port General Counsel

Execution page of the City to the First Amendment to Purchase and Redevelopment Contract, dated as of the date and year first written above.

**THE CITY OF BLOOMINGTON**

By \_\_\_\_\_  
Gene Winstead  
Its Mayor

By \_\_\_\_\_  
James D. Verbrugge  
Its City Manager

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of September, 2015, by Gene Winstead, the Mayor of the City of Bloomington, a Minnesota municipal corporation, on behalf of the City.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of September, 2015, by James D. Verbrugge, the City Manager of the City of Bloomington, a Minnesota municipal corporation, on behalf of the City.

\_\_\_\_\_  
Notary Public

Reviewed and approved by the City Attorney.

\_\_\_\_\_  
Sandra Johnson  
City Attorney

Execution page of South Loop Investments, LLC to the First Amendment to Purchase and Redevelopment Contract, dated as of the date and year first written above.

**SOUTH LOOP INVESTMENTS, LLC**

By \_\_\_\_\_  
David Peters  
Its Chief Manager

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of September, 2015, by David W. Peters, the Chief Manager of South Loop Investments, LLC, a Minnesota limited liability company, on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public

Execution page of South Loop Investments 2, LLC to the First Amendment to Purchase and Redevelopment Contract, dated as of the date and year first written above.

**SOUTH LOOP INVESTMENTS 2, LLC**

By \_\_\_\_\_  
David Peters  
Its Chief Manager

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of September, 2015, by David W. Peters, the Chief Manager of South Loop Investments 2, LLC, a Minnesota limited liability company, on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public

**EXHIBIT A**  
**DEVELOPMENT PROPERTY DESCRIPTION AND SITE MAP**

**Development Property**

**Parcel 1 (Hotel):**

Lot 1, Block 1, Lindau Link 2ND Addition according to the recorded plat thereof, Hennepin County, Minnesota.

**Parcel 2 (Restaurant, Coffee Shop, and Patio):**

Lot 2, Block 1, Lindau Link 2ND Addition according to the recorded plat thereof, Hennepin County, Minnesota.

**Parcel 3 (Market/Pharmacy):**

Lot 3, Block 1, Lindau Link 2ND Addition according to the recorded plat thereof, Hennepin County, Minnesota.

**Parcel 4 (Parking Structure):**

Lot 4, Block 1, Lindau Link 2ND Addition according to the recorded plat thereof, Hennepin County, Minnesota.

## **EXHIBIT B**

### **FORM OF COFFEE SHOP AND RESTAURANT RECAPTURE AGREEMENT**

This Recapture Agreement is made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Agreement"), between the PORT AUTHORITY OF THE CITY OF BLOOMINGTON, a public body politic and corporate organized under the laws of Minnesota (the "Authority"), the CITY OF BLOOMINGTON, MINNESOTA, a Minnesota municipal corporation (the "City"), and SOUTH LOOP INVESTMENTS 2, LLC, a Minnesota limited liability company (the "Developer"). The Authority, the City, and the Developer are collectively referred to herein as the "Parties."

WHEREAS, the South Loop Investments, LLC, a Minnesota limited liability company (the "South Loop Investments 1") proposed to acquire certain property from the Authority located in the City and legally described in Exhibit A for the development of certain improvements thereon to be completed in two phases (defined herein as the "Minimum Improvements"), including (i) an approximately 74,000 square foot hotel, including approximately 148 units (the "Hotel"), an approximately 2,000 square foot coffee shop (the "Coffee Shop"), an approximately 9,500 square foot restaurant (the "Restaurant"), approximately 81 surface parking spaces, and a public plaza area; (ii) a structured parking ramp with approximately 320 parking spaces (the "Parking Ramp," and collectively with the construction projects listed in clause (i), the "Phase I Minimum Improvements"); and (iii) an approximately 14,500 square foot grocery or pharmacy and approximately 21 surface parking spaces (the "Phase II Minimum Improvements," and collectively with the Phase I Minimum Improvements, the "Minimum Improvements"); and

WHEREAS, in order to make the Minimum Improvements economically feasible, the Authority, the City, and the Developer entered into a Purchase and Redevelopment Contract, dated December 10, 2014 (the "Redevelopment Contract"), as amended by the First Amendment to Purchase and Redevelopment Contract, dated September \_\_, 2015; and

WHEREAS, pursuant to the Redevelopment Contract, the City and the Authority have agreed to finance the costs of the Parking Ramp (defined herein) in the amount of up to \$5,749,739 with moneys from the South Loop Development Fund; and

WHEREAS, pursuant to an Assignment and Assumption Agreement, dated September \_\_, 2015, between South Loop Investments 1 and the Developer, South Loop Investments 1 assigned its rights and obligations related to the Coffee Shop and Restaurant to the Developer and the Developer assumed such rights and obligations; and

WHEREAS, in consideration of the assistance provided by the Authority and the City and described in the Redevelopment Contract, South Loop Investments 1 has agreed to enter a recapture agreement for the Hotel and the Phase II Minimum Improvements and the Developer has agreed to enter this Agreement related to the Coffee Shop and the Restaurant.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth herein, it is hereby agreed by and between the Parties hereto as follows:

#### **Section 1. Definitions**

Capitalized terms not defined herein shall have the meaning given such terms in the Redevelopment Contract. For the purposes of this Agreement, the Parties agree that the following terms are defined as set out below:

Affiliate means any person or entity that is directly or indirectly (i) Controlled by the Developer; or (ii) Controlled by the Developer's equity owner, Mercury Investments Limited Partnership, a Utah limited partnership, or its subsidiary or controlling companies.

Base Line Valuation means the projected value of the Coffee Shop and the Restaurant in future years based on projected revenues of the Coffee Shop and the Restaurant and the Capitalization Rate. The Base Line Valuation for each year of the Term of Available Recapture is set out in Exhibit B.

Capitalization Rate means eight and one half percent (8.5%).

Capital Lease means a lease in which the lessor agrees to transfer the ownership rights in the Coffee Shop and the Restaurant leased to the lessee at the termination of the lease period.

Coffee Shop means an approximately 2,000 square foot coffee shop to be constructed by the Developer or its assignee on the Coffee Shop and Restaurant Property.

Coffee Shop and Restaurant Property means Parcel 2 described in Exhibit A attached hereto.

Controlled means having the ability through ownership of voting securities, trust agreements or otherwise to direct the management and policies of the person or entity.

Excess Amount means (i) for purposes of a Recapture without Sale as described in Section 4, the amount by which the Yield on Imputed Sale exceeds the Base Line Valuation by more than twenty-five percent (25%); and (ii) for purposes of a Recapture upon Sale as described in Section 5, the amount by which the Yield on Sale exceeds the Base Line Valuation by more than twenty-five (25%).

Imputed Sales Price means the actual Net Operating Income for the most recently completed fiscal year of the Developer derived from the Coffee Shop and the Restaurant, divided by the Capitalization Rate.

Lookback Calculation Date means 60 days after (i) the date of any Sale, if such Sale occurs three years or more after the issuance of the certificate of occupancy for the Coffee Shop or the Restaurant; or (ii) the date which is 3 years after date of issuance of the certificate of occupancy for the Coffee Shop or the Restaurant.

Market Value Determination unless agreed upon by the Parties within thirty (30) days after a Sale, the market value shall be determined by appraisal, made by a market value board consisting of three (3) independent reputable real estate appraisers experienced in the valuation of commercial properties similar to the Coffee Shop and the Restaurant in the Minneapolis/St. Paul metropolitan area, each of whom shall be a member of the Appraisal Institute with the designation of "MAI." The market value will be the most probable price, as of the date of the closing of the Sale, in cash, for which the Coffee Shop and the Restaurant should sell after reasonable exposure in a competitive market under all conditions requisite to fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under any duress. The market value determination should not exclude the business enterprise value or brand value of the Coffee Shop and the Restaurant. One appraiser shall be appointed by the Authority and the City, and a second appraiser shall be appointed by the Developer. The Developer shall provide notice to the City and the Authority within ten (10) days after its first appointment. The City and the Authority shall provide notice to the Developer within ten (10) days after its first appointment. The third appraiser shall be appointed by mutual consent of the first two appraisers. If the first two appraisers are unable to agree on a third appraiser within twenty (20) days after the appointment of the second appraiser, or if the Developer or the City and the Authority refuse or neglects

to appoint an appraiser as herein provided, then such appraiser whose appointment was not made as aforesaid shall be appointed within ten (10) days by the President of the Appraisal Institute, or by such successor body hereafter constituted exercising similar functions. The members of the market value board, acting independently, shall each determine the market value of the Coffee Shop and the Restaurant, and within sixty (60) days after the appointment of the third appraiser, shall each submit their determination of such market value to the Authority, the City, and the Developer. If the determinations of at least two (2) of the appraisers shall be within one percent (1%) in amount, the average of such amount shall be deemed to be the market value. If the determinations of all three (3) appraisers shall be different in amount, the market value shall be determined as follows:

(a) If neither the highest nor lowest appraised value differs from the middle appraised value by more than ten percent (10%) of such middle appraised value, or both the highest and lowest appraised values differ from the middle appraised value by more than ten percent (10%) of such middle appraised value, then the market value shall be deemed to be the average of the three appraisals;

(b) If either, but not both, of the highest and lowest appraised values differs from the middle appraised value by more than ten percent (10%) of such middle appraised value, then the market value shall be deemed to be the average of the middle appraised value and the appraised value closest in amount to said middle value.

The market value as determined in accordance with the provisions of this subsection shall be binding and conclusive upon the Parties hereto. The Authority and the City shall pay fifty percent (50%) and the Developer shall pay fifty percent (50%) of all expenses incurred in connection with the market value board, including the reasonable fees of all three appraisers.

Minimum Improvements means, collectively, the Phase I Minimum Improvements and the Phase II Minimum Improvements.

Net Operating Income means all net operating income from the Coffee Shop and the Restaurant. The projected net operating income from the Coffee Shop and the Restaurant for each year of the Term of Available Recapture is set out in Exhibit B.

Parking Ramp means a structured parking ramp constructed on the Parking Ramp Property with approximately 320 parking spaces with substantially the size, features and standards specified on Exhibit F attached to the Redevelopment Contract.

Parking Ramp Property means the real property upon which the Parking Ramp will be constructed which is adjacent to the Coffee Shop and Restaurant Property.

Recapture means the payment to the Authority and the City of a portion of the Excess Amount.

Sale means any total or partial sale, assignment, conveyance, or Capital Lease, or substantially similar transfer with respect to the Coffee Shop and the Restaurant or the Coffee Shop and Restaurant Property or any part thereof or any real property interest therein, or any contract or agreement to do any of the same; provided however, a transfer of the Coffee Shop and the Restaurant by foreclosure or a deed-in-lieu of foreclosure will not be a Sale. The term Sale does not include: (i) any transfer of the ownership of the Coffee Shop and the Restaurant (or any portion thereof) if the transferee is an Affiliate, (ii) the transfer of membership interests in the Developer (or any portion thereof) or its members to Affiliates, (iii) a lease of the Coffee Shop or the Restaurant to a commercial tenant (including a ground lease to a restaurant tenant); (iv) a management agreement for the operations of the Coffee Shop and the Restaurant, (v) mortgages, liens or encumbrances securing debt, and (vi) a transfer of a de minimus amount of



property (e.g. conveyance of right of way to a government entity or an easement to a neighboring property owner). For the avoidance of doubt, a Sale includes any lease-purchase agreement executed within the Term of Available Recapture with parties that are not Affiliates regardless of when or if the eventual sale is transacted. A Sale shall not include property conveyed pursuant to a condemnation or similar action. A temporary transfer to an agent for the purposes of a 1031 exchange does not constitute a Sale.

Sale Price means the actual price at which the Coffee Shop and the Restaurant is sold, less (i) deductions for customary closing costs and (ii) any new capital invested in the Coffee Shop and the Restaurant after the opening date of the Coffee Shop or the Restaurant, as applicable; provided, that if (x) if the Developer or any Affiliate thereof has an ownership interest in the purchaser of the Coffee Shop and Restaurant, and (y) the Authority and the City notify the Developer in writing within 15 days of receiving notice from the Developer under Section 3 hereof that it does not believe that the actual price of the Coffee Shop and Restaurant represents market value, then the sale price shall be deemed to be market value determined by the Market Value Determination procedure.

Stabilization means the date upon which both the Coffee Shop and the Restaurant have been operating for at least one year following receipt of its certificate of occupancy.

Term of Available Recapture means the period commencing at Stabilization of the Coffee Shop and the Restaurant until the third (3rd) anniversary thereof.

Total Project Costs means all costs incurred by Developer in connection with the Coffee Shop and the Restaurant as of the Calculation Date, including allocated costs of land, on-and-off-site improvements (or assessments paid in connection with such improvements), leasing commissions, capitalized interest on all such costs, and operating deficits, and all other related soft costs incurred in connection with the Coffee Shop and the Restaurant, not including the costs of constructing the Parking Ramp born by the City and the Authority.

Yield on Imputed Sale means the Imputed Sale Price less the Base Line Valuation.

Yield on Sale means the amount by which the Sale Price exceeds the Base Line Valuation.

## **Section 2. Recapture Generally.**

The financial assistance provided to the Developer by the Authority and the City pursuant to the Redevelopment Contract is based on certain assumptions regarding likely costs and expenses associated with acquiring and constructing the Coffee Shop and the Restaurant. The Authority, the City, and the Developer agree that those assumptions will be reviewed at the times described in this Agreement, and that the amount of public assistance provided under the Redevelopment Contract may be adjusted accordingly.

## **Section 3. Notification in Event of Transfer**

In the event of any Sale of the Coffee Shop and the Restaurant during the Term of Available Recapture, the Developer shall notify the Authority and the City of the time and place of the closing of the Sale at least 30 days before the Sale will occur. The Developer must deliver to the Authority and the City any background documentation related to the Sale as the Authority and the City may reasonably request, including but not limited to any appraisal of the Coffee Shop and the Restaurant.

#### **Section 4. Recapture Without Sale**

(a) On the Lookback Calculation Date, the Authority and the City shall calculate the Imputed Sale Price based on the Net Operating Income reported by the Developer for the most recently completed fiscal year of the Developer using the Capitalization Rate. For purposes of calculating the Imputed Sale Price, the Developer shall provide to the Authority and the City a report regarding the Net Operating Income of the Coffee Shop and the Restaurant in substantially the format of the lookback pro forma attached as Exhibit B hereto (except that if definitions in this Agreement vary from GAAP, the provisions of this Agreement control) for the most recently completed fiscal year. The Developer's current fiscal year ends on December 31. The pro forma shall include rent paid by tenant/operators of the Coffee Shop and the Restaurant in the form set out in Exhibit B. Upon request, the Developer agrees to provide to the Authority and the City background documentation reasonably related to the financial data, including at a minimum three years of revenues and expenses comprising Net Operating Income. The Authority and the City may request a written certificate from an accounting firm of independent certified public accountants verifying the Net Operating Income calculations of the Developer, to be provided at the Developer's expense (which expense may be included as part of Total Project Costs).

(b) If an Excess Amount exists, the Developer shall pay to the Authority and the City 50% of the Excess Amount as and for Recapture, subject to the terms of Section 6. The Developer shall have five years in which to pay the Recapture after the Lookback Calculation Date, (payable without interest in ten (10) equal semi-annual payments commencing within six months of the Lookback Calculation Date).

#### **Section 5. Recapture Upon Sale**

(a) In case of a Sale, the Developer agrees to pay to the Authority and the City 50% of the Excess Amount as and for Recapture, subject to the terms of Section 6.

(b) Developer agrees to provide to the Authority and the City any background documentation reasonably related to the Sale and certain financial data, upon request which will include at a minimum three years of revenues and expenses comprising Net Operating Income for the most three previous fiscal years of the Developer. For purposes of analyzing the proposed Sale Price, the Developer shall provide to the Authority and the City a report regarding the Coffee Shop and the Restaurant's Net Operating Income in substantially the format of the lookback pro forma attached as Exhibit B hereto (except that if definitions in this Agreement vary from GAAP, the provisions of this Agreement control) for the most recently completed fiscal year. The pro forma shall include rent paid by tenant/operators of any component of the Coffee Shop and the Restaurant in the form set out in Exhibit B. Upon request, the Developer agrees to provide to the Authority and the City background documentation reasonably related to the financial data, including at a minimum three years of revenues and expenses comprising Net Operating Income. The Authority and the City may request a written certificate from an accounting firm of independent certified public accountants verifying the Net Operating Income calculations from the Developer, to be provided at the Developer's expense (which expense may be included as part of Total Project Costs).

(c) The amount of Recapture due and owing under this Section 5 must be paid within thirty (30) days of a Sale.

(d) If a Sale occurs with respect to Coffee Shop or the Restaurant but not both, the analysis under this Section 5 will be performed based on the Base Line Valuation, Sale Price and Net Operating Income of the component that is sold.

## **Section 6. Total Recapture**

(a) Notwithstanding anything to the contrary contained herein, in no event shall the total Recapture paid to the Authority and the City under this Agreement and the recapture agreements related to the Hotel and the Phase II Minimum Improvements exceed \$1,081,373 (38% of the public investment in the Parking Ramp).

(b) Any amounts of Recapture paid to the Authority and the City pursuant to this Agreement shall be deposited to the South Loop Development Fund.

## **Section 7. Term**

This Agreement shall terminate automatically, without further action of the Parties, on the earlier to occur of (a) payment, if any, of Recapture at the end of the Term of Available Recapture (except when payments are required as in Section 4(b) then the Term expires when all payments for Recapture have been received), (b) payment to the Authority and the City of Total Recapture in the amount of \$1,081,373 under this Agreement, (c) a foreclosure or deed in lieu of foreclosure of a lien on the Coffee Shop and the Restaurant, or (d) sixty (60) days after the expiration of the Term of Available Recapture, provided however, this Agreement shall not be terminated until payments due and owing under Section 4(b) have been paid in full.

## **Section 8. Amendment/Waiver**

This Agreement may only be amended by written document executed by each party hereto or their successors and assigns. No term of this Agreement shall be waived or deemed waived unless done so in writing signed by the party benefited by the term to be waived.

## **Section 9. Notices**

All notices and other communications under or relating to this Agreement shall be given in the manner and to the respective Parties at their respective addresses as set forth in the Redevelopment Contract.

## **Section 10. Assignment of Coffee Shop and the Restaurant**

If the Coffee Shop and the Restaurant are sold, transferred or otherwise conveyed to another owner prior to Stabilization, then the obligations hereunder shall be assumed by the new owner.

## **Section 11. Miscellaneous**

(a) This Agreement does not represent an interest in the Coffee Shop or the Restaurant, and the Authority, the City, and the Developer are not partners. The rights of the Authority and the City to payment hereunder are binding on the Developer and its successors. The rights of the Authority and the City to payment hereunder are and shall in all cases be and remain subordinate to the rights, liens, assignments and security interests of any holder of indebtedness secured by the Coffee Shop and the Restaurant, or any part thereof. Any subordination agreement requested by such lienholders shall be subject to such commercially reasonable terms and conditions as the Authority, the City and the lienholder mutually agree to in writing and must be approved by the City Council and the Board of the Authority.

(b) The provisions of this Agreement are binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

(c) This Agreement shall be construed under and governed by the laws of the State of Minnesota.

(d) This Agreement may be executed in counterparts, all of which taken together shall constitute one and the same instrument.

(e) This Agreement may be recorded against the Coffee Shop and Restaurant Property in the property records of Hennepin County.

## **Section 12. No Lien**

The Parties agree that this Agreement does not constitute a lien, claim, encumbrance or charge against the Coffee Shop and Restaurant Property or rents or other income generated by the Coffee Shop and Restaurant Property, and is payable only as set forth in Sections 4 and 5 hereof. Upon payment to the Authority and the City of any Recapture, the Authority and the City shall deliver a certificate acknowledging receipt of payment in form and substance reasonably acceptable to Developer. Such certificate shall be in recordable form and shall evidence that all payments required to be made to the Authority and the City have in fact been made.

IN WITNESS WHEREOF, the Authority and the Developer have each caused these presents to be signed in its name on behalf by its authorized representatives, all as of the day and year first written above.

**PORT AUTHORITY OF THE CITY OF  
BLOOMINGTON**

By \_\_\_\_\_  
Robert Erickson  
Its President

By \_\_\_\_\_  
Schane Rudlang  
Its Administrator

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Robert Erickson, the President of the Port Authority of the City of Bloomington, under the laws of the State of Minnesota, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Schane Rudlang, the Administrator of the Port Authority of the City of Bloomington, under the laws of the State of Minnesota, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

Reviewed and approved by Port General Counsel.

\_\_\_\_\_  
Julie Eddington  
Port General Counsel

This document was drafted by:  
KENNEDY & GRAVEN, CHARTERED (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, Minnesota 55402  
Telephone: (612) 337-9300

**THE CITY OF BLOOMINGTON**

By \_\_\_\_\_  
Gene Winstead  
Its Mayor

By \_\_\_\_\_  
James D. Verbrugge  
Its City Manager

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF HENNEPIN     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Gene Winstead, the Mayor of the City of Bloomington, a Minnesota municipal corporation, on behalf of the City.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF HENNEPIN     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by James D. Verbrugge, the City Manager of the City of Bloomington, a Minnesota municipal corporation, on behalf of the City.

\_\_\_\_\_  
Notary Public

Reviewed and approved by the City Attorney.

\_\_\_\_\_  
Sandra Johnson  
City Attorney

Signature Page of City for Coffee Shop and Restaurant Recapture Agreement

**SOUTH LOOP INVESTMENTS 2, LLC**

By \_\_\_\_\_  
David W. Peters  
Its Chief Manager

STATE OF MINNESOTA    )  
                                  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by David W. Peters, the Chief Manager of South Loop Investments 2, LLC, a Minnesota limited liability company, on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public

Signature Page of Developer for Coffee Shop and Restaurant Recapture Agreement

## **EXHIBIT A OF EXHIBIT A**

### **DEVELOPMENT PROPERTY DESCRIPTION**

#### **Development Property**

##### **Parcel 1 (Hotel):**

Lot 1, Block 1, Lindau Link 2ND Addition according to the recorded plat thereof, Hennepin County, Minnesota.

##### **Parcel 2 (Restaurant, Coffee Shop, and Patio):**

Lot 2, Block 1, Lindau Link 2ND Addition according to the recorded plat thereof, Hennepin County, Minnesota.

##### **Parcel 3 (Market/Pharmacy):**

Lot 3, Block 1, Lindau Link 2ND Addition according to the recorded plat thereof, Hennepin County, Minnesota.

##### **Parcel 4 (Parking Structure):**

Lot 4, Block 1, Lindau Link 2ND Addition according to the recorded plat thereof, Hennepin County, Minnesota.



## **EXHIBIT B OF EXHIBIT A**

### **PRO FORMA**

This exhibit will be completed when there is information regarding the restaurant/coffee shop development.